

CHAPTER 41**RECORD CONFIDENTIALITY AND ACCESS
TO CLIENT AND AGENCY RECORDS****Authority**

N.J.S.A. 9:6-8.10a, 30:1-12, 30:4-24.3, 30:6D-4(f) and 47:1A-1 et seq.;
34 CFR 361.38, 42 CFR Part 2, and 45 CFR Parts 160 and 164;
and 42 U.S.C. §§ 3601 et seq. and 42 U.S.C. §§ 15001 et seq.

Source and Effective Date

R.2004 d.320, effective August 16, 2004.
See: 36 N.J.R. 1906(a), 36 N.J.R. 3920(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 41, Record Confidentiality and Access to Client and Agency Records, expires on February 12, 2010. See: 41 N.J.R. 2880(a).

Chapter Historical Note

Chapter 41, Administration, was adopted as R.1989 d.134, effective March 20, 1989. See: 20 N.J.R. 2435(a), 21 N.J.R. 757(b).

Subchapter 4, Human Rights Committees, was adopted as R.1989 d.302, effective June 5, 1989. See: 20 N.J.R. 2552(a), 21 N.J.R. 1573(a).

Pursuant to Executive Order No. 66(1978), Chapter 41, Administration, expired on March 20, 1994.

Chapter 41, Administration, was adopted as new rules by R.1994 d.196, effective April 18, 1994. See: 26 N.J.R. 81(a), 26 N.J.R. 725(a), 26 N.J.R. 1655(a). Pursuant to Executive Order No. 66(1978), Chapter 41 expired on April 18, 1999.

Chapter 41, Administration, was adopted as new rules by R.1999 d.263, effective August 16, 1999. See: 31 N.J.R. 844(a), 31 N.J.R. 2396(a).

Chapter 41, Record Confidentiality and Access to Client and Agency Records, was adopted as new rules by R.2004 d.320, effective August 16, 2004. Subchapter 2, Access to Client Records and Record Confidentiality, was repealed by R.2004 d.320, effective August 16, 2004. See: Source and Effective Date.

Subchapter 4, Human Rights Committee, was repealed by R.2004 d.321, effective August 16, 2004. See: 36 N.J.R. 1910(a), 36 N.J.R. 3925(a).

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SUBCHAPTER 1. GENERAL PROVISIONS**10:41-1.1 Purpose**

The purpose of this chapter is to provide a uniform approach to records management that safeguards the confidentiality of client records and agency records maintained by the Division.

10:41-1.2 Scope

This chapter applies to all service components of the Division and all providers under contract with or regulated by the Division.

10:41-1.3 Definitions

The words and terms in this chapter have the following meanings, unless the context clearly indicates otherwise.

“Agency records” means the organized compilation of documents, including electronic documents, that relate to the operation of a Division component or a provider agency under contract with or regulated by the Division.

“Authorization” means a valid, written authorization on a form that conforms to the Federal regulations, 45 C.F.R. Parts 160 and 164, for the release of protected health information. The authorization may only be signed by the individual, if a competent adult, or the legal guardian of a minor or incapacitated adult.

“Client records” means the organized compilation of documents, including copies of electronic documents, that relate to the provision of services to an individual.

“Department” means the Department of Human Services.

“Discharge” means the individual is no longer receiving functional services from the Division.

“Division” means the Division of Developmental Disabilities and its staff.

“Division circulars” means a sequentially numbered document issued by the Director, Division of Developmental Disabilities, to promulgate operational policies, standards and key procedures of the Division. The circulars convey policies that have broad applicability to major components of the Division and may have applicability to provider agencies under contract with or regulated by the Division. The Director may, however, limit the scope of a circular to a single component.

“Individual” means a person who is receiving or has applied for services from the Division. For the purpose of this chapter, this term also applies to those persons who are not eligible for services from the Division but reside in facilities regulated by the Division.

“MIS identification number” means the six-digit serial number assigned to all individuals served by the Division. This number is unique to each individual and does not provide any individually identifying information.

“Next of kin” means the spouse, mother and/or father, guardian, persons connected by birth or marriage, or other persons so indicated on official records.

“Office of the Regional Assistant Director” means a component of the Division that provides administrative oversight for the provision of services to individuals served by the Division. Counties of service and locations of such offices are as follows:

Sussex, Warren, Morris, Bergen, Passaic, Hudson, Essex, Somerset and Union Counties:

Office of the Regional Assistant Director
c/o Greenbrook Regional Center
275 Greenbrook Road
Green Brook, NJ 08812

Mercer, Middlesex, Ocean, Hunterdon, Monmouth, Camden, Atlantic, Salem, Cape May, Gloucester, Cumberland and Burlington Counties:

Office of the Regional Assistant Director
PO Box 726
Trenton, NJ 08625

“Protected health information (PHI)” means any information, including demographic information, whether oral or recorded in any form or medium, that is created or received by the Division and relates to the past, present, or future physical or mental health or condition of an individual served by the Division, and identifies the individual, or the information can be used to identify the individual. PHI also means individually identifiable health information created or received by the Division that is transmitted or maintained by the Division.

“Provider” means a person, agency or business that is under contract with or regulated by the Division.

“Secure environment” means data encryption, which is a process involving data coding to achieve data confidentiality, data integrity, end point authentication, and other security objections.

“Service component” means any developmental center, regional office or central office unit.

“Transfer” means movement of individual or record from one Division component or service provider to another.

SUBCHAPTER 2. DIVISION POLICY ON CONFIDENTIALITY OF RECORDS

10:41-2.1 Division policy on confidentiality of records

(a) The Division recognizes its responsibility to protect the confidentiality of the records of individuals in its care. Therefore, all client records, as defined in N.J.A.C. 10:41-1.3, shall be kept confidential in accordance with N.J.S.A. 30:4-24.3, which mandates that all certificates, applications, records and reports that directly or indirectly identify an individual currently or formerly receiving services from the Division be kept confidential and are not subject to public disclosure. In addition, the requirements of this chapter conform with the Federal Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 C.F.R. Parts 160 and 164 as it applies to the release of and access to protected health information; N.J.S.A. 30:6D-1 et seq., Developmentally Disabled Rights Act; 42 C.F.R. Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records; 34 C.F.R. 361.38, Vocational Rehabilitation, Protection, Use and Release of Patient Information; and the Federal Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 et seq.

(b) The protections in this chapter extend to all records of individuals held by the Division, including applications for services of persons determined ineligible for services and those applications that are initiated but not completed.

(c) Release of Division agency records, as defined in N.J.A.C. 10:41-1.3, shall be in accordance with N.J.S.A. 47:1A-1 et seq., the Open Public Records Act, and this chapter. All such records shall be redacted in accordance with N.J.A.C. 10:41-4.4.

(d) Records that are otherwise protected by law, for example, individual HIV/AIDS information as indicated in N.J.S.A. 26:5C-5 et seq., and individual drug and alcohol abuse information as indicated in 42 C.F.R. Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records, shall not be disclosed without a specific authorization for the release of such information or a judicial order.